Supreme Court, U.S.
FILED
DEC 26 2006
OFFICE OF THE CLERK

No. 06-883

In The

Supreme Court of the United States

ERLINDA DOMINGUEZ,

Petitioner,

v.

JUNIE BARNEDO AND JUAN BARNEDO,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Hawaii

PETITION FOR WRIT OF CERTIORARI

ERLINDA DOMINGUEZ
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December 26, 2006

QUESTION PRESENTED FOR REVIEW

WHEN THE ATTORNEY IS SUED FOR LEGAL MALPRACTICE IN A STATE COURT FOR ERRORS ALLEGEDLY COMMITTED IN A FEDERAL LAWSUIT INCLUDING FAILURE TO COLLECT THE FEDERAL DEFAULT JUDGMENT, WHETHER THE STATE COURT, WITHOUT VIOLATING THE ATTORNEY'S DUE PROCESS RIGHTS, CAN SUBMIT THE LEGAL ISSUES TO THE JURY, DISREGARD THE ABSENCE OF PROOF FOR RESPONDENTS' CLAIMS AND/OR DISREGARD THE EXCULPATORY EVIDENCE THAT CAME OUT IN THE LEGAL MALPRACTICE TRIAL THAT THERE WAS NO DIVERSITY SUBJECT MATTER JURISDICTION OF THE FEDERAL COURT IN THE UNDERLYING FEDERAL CASE AS REQUIRED BY THE U.S. CONST., ART. III, SEC. 2.

LIST OF PARTIES

The parties named in the proceedings below are:

1. JUNIE BARNEDO-
   Plaintiff (herein Respondent)

2. JUAN BARNEDO –
   Plaintiff (herein Respondent)

3. ERLINDA DOMINGUEZ –
   Defendant (herein Petitioner)

4. ERLINDA DOMINGUEZ,
   dba LAW OFFICES OF
   ERLINDA DOMINGUEZ –
   Defendant (the "dba" is not part of the judgment in Court below)

5. RON R. ASHLOCK –
   Defendant dismissed in trial Court

6. THOMAS KASTER –
   Defendant dismissed in trial Court

7. WILLIAM COPULOS –
   Defendant dismissed in trial Court

8. DAVID KUWAHARA –
   Defendant dismissed in trial Court

9. THOMAS WALSH –
   Defendant dismissed in trial Court

The defendants above named who were dismissed, and the "dba" which is a description of the "offices" of Petitioner, have no interest in the outcome of this Petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari for review of the Decision of the Supreme Court of the State of Hawaii affirming the circuit Court's (amended) judgment that Petitioner committed legal malpractice within a federal lawsuit where the Federal Court had no subject matter jurisdiction.

OPINIONS BELOW

The unreported Opinion which is a Summary Disposition Order of the Supreme Court of the State of Hawaii, filed on Sept. 29, 2006 is attached. (App. 1). The unreported Order of the Supreme Court of the State of Hawaii Denying the Motion for Reconsideration, filed on Oct. 30, 2006 is attached. (App. 49). The Amended Judgment of the trial Court, filed on Feb. 9, 2004 which was appealed and referred to is attached. (App. 17).

JURISDICTION

The decision of the appeal Court, the Hawaii State Supreme Court, which is the Summary Disposition Order, was filed on Sept. 29, 2006. (App. 1). The Court allowed extension of time to file a Motion for Reconsideration. (App. 12). The Motion was filed in time and was denied by Court Order filed on Oct. 30, 2006. (App. 49). The final Judgment on Appeal was entered on Nov. 27, 2006. (App. 14). This Petition was filed within ninety days from the Summary Disposition Order filed on Sept. 29, 2006 and from entry of the final Judgment on Appeal, filed on Nov. 27, 2006. This Court has jurisdiction to review the decision

of the Court below by Writ of Certiorari under 28 U.S.C. § 1257 and Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In pertinent parts, the U.S. Constitution, Art. III, Sec. 2, provides that the judicial Power shall extend to all Cases, in Law and Equity to controversies "between citizens of different States", and "between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." (App. 51). 28 U.S.C. § 1332(a)(1)-(2) provide that the District Courts shall have original jurisdiction of all civil actions where the matter in controversy is between "citizens of different States" or "citizens of a State and citizens or subjects of a foreign state." (App. 52).

In pertinent parts, the Fifth Amendment of the Federal Constitution provides that no person "shall . . . be deprived of life, liberty, or property without due process of law". (App. 53). The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (App. 54).

STATEMENT OF THE CASE

This legal malpractice case filed on July 27, 1999 in a Hawaii State Court by Respondents who are husband and wife, arose from a product liability lawsuit filed on their behalf by Petitioner, an attorney, on Sept. 21, 1989 in the United States District Court for the State of Hawaii.

Respondents as plaintiffs in that suit alleged in their Complaint that they were "citizens" of the State of Hawaii and invoked 28 § 1332, U.S. Code for the Federal Court's jurisdiction. The defendant Japan Company, *Marukiku,* did not appear and it countersued in a Japan Court. In the federal default hearing, Respondents' evidence was their medical and employment records with no proof, verbal or written, of Respondents' "citizenship". The Court issued its Findings of Facts with no mention of citizenship, and the federal Default Judgment was filed on Aug. 24, 1993 in the total sum of $483,875.09 for both Respondents.

In this legal malpractice case filed in a State Court, Respondents assert that the federal default judgment is uncollectible due to Petitioner's failure to comply with the *Hague Treatise* method of service to a foreign company through a "central authority", and that Petitioner was wrong in obeying the Federal Court orders by serving through certified mail and by publication. Respondents further assert that Petitioner did not defend them or provide for their defense in the Japan Court which entered a judgment that precludes recovery. Respondents finally assert that Petitioner failed to name in the lawsuit a Hawaii Company, *Royal Trading.* The jury found this company was "*not in the chain of distribution*", that Petitioner was negligent in all three counts and awarded $483,875.09, the amount of the federal default judgment. (App. 55).[1] Pre-judgment interest from the entry of the federal judgment on Aug. 24, 1993 was imposed by the Court. (App. 47). The other defendants were dismissed and

[1] "App." refers to Appendix herein; "Tr." to transcript in trial Court.

the amended judgment against Petitioner is approximately 1.2 million dollars. (App. 17).

In the malpractice trial, Respondents testified: They are from the Philippines; that Respondent (husband) came to the United States in 1987 on a *visitor visa*, faced deportation charges until year 2003 when he was allowed to apply for U.S. residency. The Respondent (wife) was an admitted *resident alien* or immigrant, and became a U.S. citizen in 1991; and Respondents retained a different attorney for their immigration purposes. (App. 59-62; Tr. 3/6/03).

In the State of Hawaii, the constitutional "due process" of the defendant attorney in legal malpractice is found in *Collins v. Greenstein*, 595 P.2d 275, 281, 61 Haw. 26 (Haw. 1979): "The burden is on the plaintiff to prove both the attorney's negligence and also what the outcome of the mishandled litigation would have been if it had been properly tried".

Petitioner's constitutional "due process" and "federal questions" sought to be reviewed were raised in the following manner: In a Motion for Summary Judgment filed on Aug. 26, 2002, Petitioner sought to dismiss the malpractice case as time-barred; Respondents' declarations that they "discovered" the 1989 errors of Petitioner when so informed in 1997 by their new attorneys, was insufficient extension of "accrual" to file their claim within six years. The Motion was denied. (App. 20). In a Motion for Summary Judgment filed on Aug. 26, 2002, Petitioner again sought dismissal; the issues were "legal", Petitioner was hired for Hawaii claims, and is not a Japan attorney, the defendant Company, *Marukiku,* has its business solely in Japan, and the only evidence Respondents submitted

was a "letter" of their legal expert explaining his theories, that the federal judgment cannot be enforced in Japan.[2] The Motion was denied. (App. 22).

On Feb. 14, 2003, Petitioner filed her *Motion in Limine No. 1* to prohibit admission of evidence of erroneous decisions of Petitioner until the Court determines that well-informed lawyers could not entertain reasonable doubt as to the decisions made, *the judgment calls*. Respondents claimed they were jury issues. The Motion was denied. (App. 24). On same date, Petitioner filed her *Motion in Limine No. 4* to bar from evidence the report of the product defect expert, *deceased*, previously hired by Petitioner, to prove the product defect in the federal lawsuit, as prejudicial and cannot be cross-examined. Respondents claimed it was needed by their expert. The Motion was denied. (App. 26). On same date, Petitioner filed her *Motion in Limine No. 8* to bar from evidence the amount of the federal default judgment that Petitioner earned for Respondents, as prejudicial and cannot be cross-examined. Respondents claimed this was a Court document. The Motion was denied. (App. 28). On same date, Petitioner filed her *Motion in Limine No. 12* to have the jury first decide the product defect that caused the injuries before the legal malpractice is heard, to give Petitioner her due process of a "*trial within a trial*". Respondents claimed this was unnecessary. The Motion was denied. (App. 30).

On Feb. 21, 2003, Petitioner objected to the Federal Court records to prove the product defect case, as prejudicial and cannot be cross-examined. These included the Court

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[2] The non-movant must go beyond the pleadings and come forward with specific facts indicating a genuine issue for trial to avoid summary judgment. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

Findings of Facts that the product was defective that caused Respondents' injuries and the default judgment for $483,875.09; Respondents claimed these were findings of the Federal Court. They were admitted in open Court. (App. 32; Tr. 3/5/03). During trial, Petitioner moved for directed verdict because there was no evidence that *Royal Trading* sold the product, no evidence of any attempt to enforce the federal default judgment, no evidence that an adverse Japan judgment existed; there was only the legal expert's testimony, that *certified mail and publication service* ordered by the Federal Court and adopted by Petitioner violated the *Hague Treatise.* Respondents claimed the jury should decide. The motion was denied and the Court ruled, *"I'm saying prima facie case is judgment hasn't been collected."* (App. 34; Tr. 3/12/03). Post trial motions were agreed to be heard before entry of judgment.

On Apr. 2, 2003, Petitioner filed a Motion for Entry of judgment in her favor because the issues were legal, no evidence was presented of damage caused by her conduct. Respondents claimed the jury has decided. The Motion was denied (App. 40). On same date, Petitioner filed a Motion for judgment in her favor as a matter of law because the issues were legal and *Royal Trading* was found to be "not in the chain of distribution." (App. 56). Respondent claimed the jury has decided. The Motion was denied. (App. 43). On Apr. 11, 2003, Petitioner filed her Opposition to Respondents' Motion for pre-judgment interest commencing from the filing of the federal default judgment in 1993, as an arbitrary date with no legal support. Respondents claimed the default judgment quantified their damages. Respondents' Motion was granted for almost half a million dollars in interest. (App. 47).

On June 6, 2003, Petitioner filed a Motion for New Trial. Her fundamental rights were further violated with

the entire Federal Court records that were prejudicial and cannot be cross-examined. Respondents disagreed. The Motion was denied. (App. 45). Petitioner appealed.[3]

In her appeal (amended) opening brief, Petitioner presented the above federal issues of due process, and Respondents' "citizenship" that came out during the malpractice trial; that "alien sued another alien" in the underlying federal lawsuit, in violation of U.S. Constitution, Art. III, Sec. 2.[4] (App. 63-66). Respondents claimed it was not a trial Court issue and did not argue. In her reply brief, Petitioner again presented the issue. (App. 67-68). In its Decision filed Sept. 29, 2006, the appeal Court did not mention this jurisdictional issue. (App. 1). Petitioner moved for reconsideration, presented the issue and directed the court's attention to the holding of the Hawaii Federal Court in *Arai v. Tachibana,* 778 F. Supp. 1535, 1541 (Haw. 1991), as follows: "*One cannot be a citizen of a state without first being a citizen of the United States*". (App. 70-71). Here, not just Respondent husband who was an overstaying visitor, but the Respondent wife who was an admitted resident alien, destroyed the Federal Court subject matter jurisdiction when they filed suit in 1989. Respondents did not argue. On Oct. 30, 2006, the appeal Court denied the Motion, and again, did not mention the issue. (App. 49).

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[3] Excerpts of Petitioner's appeal briefs are part of the appendices to show that the federal due process issues and the federal question of diversity jurisdiction were properly presented to the appeal court.

[4] Three appeals were consolidated. Petitioner presented the federal subject matter jurisdiction issue in the 26394 and 27035 briefs and in her appeal Motion for Reconsideration, where in that Motion, she added the issue of the *pre-judgment interest* from an arbitrary start and the issue of *Royal Trading, not within the chain of distribution.*

REASONS FOR GRANTING THE WRIT

I. THE CONSTITUTIONAL AND FEDERAL QUESTIONS WERE PROPERLY PRESENTED.

The highest State Court is silent in regard to the federal questions presented but the records prove that they were presented. (App. 63-71). The rule requires that the issue was addressed by the highest Court "or" that it was properly presented to the State Court that rendered the decision that this Court is asked to review. See *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997). The due process issues were raised both in the trial Court and in the Appeal Court. The Federal Court subject matter jurisdiction was specifically raised only in Petitioner's appeal briefs because the evidence came out late in trial. On pages 17, 18, 21, 22 of her (amended) opening brief, Petitioner pointed to the location of Respondents' testimony of their alienage. There is no Hawaii State law that requires that an issue of subject matter jurisdiction must first be addressed by the trial Court. Even if there is, a review is warranted if the non-compliance is not an adequate and independent ground for the State Court to disregard the claim. See *Adams v. Robertson*, *supra*. Any State procedure cannot violate the Constitution. Federal diversity jurisdiction is a federal question that cannot be affected by prescribed modes of redress in courts. See *Hyde v. Stone*, 61 U.S. (20 How.) 170, 15 L. Ed. 874 (1858).

In the Hawaii case of *In re Taxes Hawaiian Land Co.*, 53 Haw. 45, 487 P.2d 1070 (1971), the issue of statutory application was raised for the first time in the reply brief. In addressing the issue, nonetheless, the appellate Court considered three factors: Whether the issue goes to the integrity of the fact finding process; the extent that the error may have been correctible if properly raised; and whether the issue involves questions of fact that were not but could have been fully developed in the trial Court. Here, Respondents testified to the true facts of their alien citizenship

when they filed suit in the Federal Court, even upon questioning of their own counsel. (App. 59-62). Respondents sustained no prejudice and could have done nothing at trial to change the facts of their personal circumstances. Similarly, if the want of equity in the underlying issue of mortgage does not come to light until the final decision (for payment of money), the court should not hesitate to dismiss the bill although the question of jurisdiction is presented for the first time in the appellate court." See *Nawaihee v. Goo Wan Hoy*, 26 Haw. 137 (Haw. Territory 1921). In *Greene v. Texeira*, 54 Haw. 231, 234 (1973), the issue involved statutory construction. The Court held that it was proper to consider the legal issue even if it was presented for the first time subsequent to the submission of briefs and oral argument. The Court considered the importance of the issue and the fact that therein appellant had full opportunity to present his facts on the issues. Federal diversity jurisdiction is a federal question that cannot be affected by prescribed modes of redress in courts. See *Hyde v. Stone*, 61 U.S. (20 How.) 170, 15 L. Ed. 874 (1858). Jurisdiction must be noticed by the Court at all points in the litigation. See *Capron v. Noorden*, supra. If Petitioner waived the issue, and she did not, to permit the appeal Court to disregard the issue is to give the waiver legitimizing effect. See *Fretag v. Comm'r of Internal Revenue*, infra. The Federal Court jurisdiction cannot be created by failure of the appeal Court to review what was presented.

II. THE DECISION BELOW CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT ON U.S. DISTRICT COURT SUBJECT MATTER JURISDICTION.

A judgment is void for lack of subject matter jurisdiction. See *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83,

94, 101 (1998). It is where a Federal District Court has jurisdiction over an action because of the diverse citizenship of the parties that it has ample power to pass upon all issues or matters incidental to the action. See *Wichita R.R. & Light Co. v. Pub. Utils. Comm'n*, 260 U.S. 48, 54 (1922). Consent cannot waive the issue, and "if this is conceded, the Federal courts would become the common resort of persons who have no right, either under the Constitution or the laws of the United States, to litigate in those courts." See *People's Bank v. Calhoun,* 102 U.S. 256, 260-261 (1880). Even estoppel cannot endow the Federal Court jurisdiction it did not possess; "its jurisdiction is carefully guarded against expansion by judicial interpretation or by prior consent of the parties." See *American Fire & Cas. v. Finn*, 341 U.S. 6, 17-18 (1951).[5] A party does not waive the requirement by failing to challenge jurisdiction early in the proceedings. See *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). To permit an appeal Court to completely disregard the issue because of waiver would be "to give the waiver legitimating effect". See *Fretag v. Comm'r of Internal Revenue*, 501 U.S. 868, 896-897 (1991). The issue must be noticed by a Court in all points in the litigation. See *Capron v. Van Noorden*, 6 U.S. (2 Cranch) 126, 127 (1804).

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[5] *Res judicata,* rarely claimed, would negate Respondents' case that the default judgment is defective and unenforceable; and the elements are absent that the parties and issues are the same, fully litigated on the merits by a Court of competent jurisdiction. See *Underwriters Nat'l Assur. Co. v. North Carolina Life & Accident*, 455 U.S. 691, 706-707 (1982); *Cromwell v. County of SAC*, 96 U.S. 51, 53 (1877). Petitioner does not know of any defense of Respondents for the lack of federal subject matter jurisdiction because "they refuse to argue" and the appeal Court did not make an opinion.

At the time of filing the action, the adverse parties must be citizen or citizens and an alien or aliens; and a district Court shall not have jurisdiction "in which a party has been improperly or collusively joined to invoke jurisdiction." See *Kramer v. Caribbean Mills*, 394 U.S. 823, 824 (1969). Here, the Respondent (husband) was a "visitor alien" and he sued a "nonresident alien" company incorporated and doing business in Japan only, destroying the federal diversity jurisdiction. (App. 52).

As it pertains to Respondent (wife) and to suits between "resident aliens" and "nonresidents", the issue appears a novel question before this Court. Federal Courts recognize that the permanent resident alien provision of 28 U.S.C. § 1332(a) does not confer diversity jurisdiction in actions "between permanent resident aliens and nonresident aliens" as such interpretation would violate the Constitution. See *Banci v. Wright*, 44 F. Supp. 2d 1272, 1275 (S.D. Fla. 1999); *Chavez-Organista v. Vanos*, 208 F. Supp. 2d 174, (D.P.R. 2002); *Engstrom v. Hornseth*, 959 F. Supp. 545, 550 (D.P.R. 1997); *Lloyds Bank PLC v. Norkin*, 817 F. Supp. 414, 416 (S.D.N.Y. 1993); *Saadeh v. Farouki*, 107 F.3d 52, 60 (D.C. Cir. 1997). The Hawaii federal case of *Arai v. Tachibana*, supra, involved two Japanese plaintiffs, a Hawaiian defendant and two other defendants who were Japanese citizens and legal permanent residents in Hawaii. The Court dismissed the case for lack of subject matter jurisdiction. Here then, Respondents, a resident alien (wife) and an overstaying visitor (husband) each and both destroyed the Federal Court subject matter jurisdiction.

The defendant Japan Company did not appear and waive the issue of personal jurisdiction. A defendant must have "minimal contact" with the forum State so as not to

offend "traditional notions of fair play and substantial justice". See *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In a malpractice case, the defenses of the original defendant are defenses of the defendant attorney. Pursuant to the State case of *Collins v. Greenstein*, *supra*, the outcome of the (void) underlying federal lawsuit "if properly tried" would have resulted in No Recovery, no damage caused by Petitioner.

III. THE DECISION BELOW CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT ON CONSTITUTIONAL DUE PROCESS.

"Procedural due process is not intended to promote efficiency or accommodate possible interests; it is intended to protect the particular interests of the person whose possessions are about to be taken." See *Fuentes v. Shevin*, 407 U.S. 67, 82-84 (1972). The Supreme Court will strike down state statutes unfairly shifting the burden of proof. See *Speiser v. Randall*, 357 U.S. 513, 524 (1958). At trial, the Court made a law and shifted the burden of proof to Petitioner, that the uncollected judgment is the "*prima facie*" legal malpractice. (App. 36). Petitioner was tried on the Federal Court records, the interpretation of the *Hague Treatise* and the assumptions of Respondents' legal expert. (App. 56). Following a Court Instruction, the jury found *Royal Trading* to be "not in the chain of distribution". (App. 39, 56). Contrary to that Court Instruction, the jury found Petitioner negligent for not naming it. (App. 58). The ten years of pre-judgment interest started from the filing of the federal default judgment, which judgment the jury concluded to be defective and unenforceable. (App. 48, 55). There was *no coherence* for due process of *competent*

notice of the issue and competent hearing.[6] See the "Verdict Form" where the jury was made to respond to vague and inconsistent questions, and was made to decide the correct interpretation of the *Hague Treatise*. (App. 55).[7] The magnitude of deprivation is of critical significance in the due process calculus, for the process to which an individual is entitled is in part determined "by the extent to which he may be condemned to suffer grievous loss."[8] See *Goldberg v. Kelly,* 397 U.S. 254, 263 (1970). Petitioner stands to lose her livelihood and her possessions. Due process of law is a *guarantee of respect for those personal immunities* which are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." See *Snyder v. Commonwealth of Massachusetts*, 291 U.S. 97, 105 (1934). The appeal Court Summary Disposition Order ("decision") listed *nine* among the many issues presented by Petitioner. (App. 3). The decision claimed that Petitioner failed to comply with some appeal format. Petitioner claims she complied with all the requirements.[9] Nonetheless, the appeal Court chose *three* of the issues it listed to address. (App. 8). "When a State undertakes to

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[6] In the malpractice trial, Respondents' evidence was the entire Federal Court records which included the workers compensation records, with NO testimony from Respondents' medical, economic or product defect witness. The liability insurance policy of *Royal Company* found to be *not within the chain of distribution,* was Respondents' evidence of the solvency of *Marukiku* whose whereabouts they did not know.

[7] In the March 2003 trial, Petitioner's Verdict Form was rejected and the Court ordered the wordings of the verdict form. (App. 55).

[8] Petitioner had no malpractice insurance.

[9] Petitioner respectfully denies the blanket statement in the appeal decision such as she failed to properly present the point, provide the standard, etc. (App 3). Without opportunity to show the appeal Court what it overlooked, the severest of all available sanctions was imposed on Petitioner by the Court's refusal to address her other issues listed.

restrain unlawful advocacy it must provide procedures which are adequate to safeguard against infringement of constitutionally protected rights – rights which we value most highly and which are essential to the workings of a free society." See *Speiser v. Randall*, 357 U.S. 513, 521 (1958).

Of greater magnitude of deprivation than the above, nowhere in the appeal decision was an acknowledgment of the "existence" of the most significant issues Petitioner presented. (App. 3). Any of these issues presented and "not listed", would exonerate Petitioner "as a matter of law", *not upon discretion.* They were: (1) Her Motion for Summary Judgment based on the absence of evidence to support the expert's letter report, and was denied (App. 22); (2) Her Motion for Directed Verdict due to complete absence of Respondents' evidence, and was denied (App. 34); (3) Her *Motion in Limine* that *legal issues and judgment calls* were for the Court to decide, and was denied (App. 24); and (4) the most critical *issue of the subject matter jurisdiction of the Federal Court.* (App. 59-62). The issues were properly presented in Petitioner's fifty-paged Opening Brief (App. 63). The appeal decision did not say *why* the "existence of these issues" was not noticed, a bare minimum for due process. The Court held in *Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998):

> Presence of nondiverse party automatically destroys federal district court's original jurisdiction; no party need assert defect; no party can waive defect or consent to jurisdiction, and no court can ignore defect but, rather, court noticing defect must raise the matter on its own. 28 U.S.C.A. Sec. 1332.

If Courts choose the issues to hear, more so of *subject matter jurisdiction*, a litigant can lose all due process "to be heard", for a Court *can choose to hear none of the issues or less substantial issues*.[10] Constitutional right to be heard is basic aspect of duty of government to follow fair process of decision making when it acts to deprive a person of his possessions. See *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). Petitioner had "no adversarial trial" in the circuit Court, and "was not heard" by the appeal Court, even on the issue of the underlying Federal Court subject matter jurisdiction. "No State can, by any tribunal or representative, render nugatory a provision of the Supreme law." See *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 15 (1907).

IV. THE QUESTION PRESENTED IS OF GREAT IMPORTANCE TO PROTECT THE LIMITS OF U.S. COURTS' JURISDICTION AND THE CONSTITUTIONAL DUE PROCESS RIGHTS OF ATTORNEYS WHO ARE SUED IN STATE COURTS FOR ERRORS ALLEGEDLY COMMITTED IN FEDERAL COURTS.

Allegations in complaints could remain undetected when defendants do not contest and alert counsel regarding errors in fact and in law. This happened in the underlying

[10] Unidentified portions of Petitioner's appeal briefs were described as *invective*, and the appeal decision quoted the Conclusion in her brief, *"There is evil that lurks underneath Appellees' claims . . . "* (App. 9). Petitioner apologized to the Court and to Respondents. She referred the "evil" to the misrepresentation or fraud perpetrated upon the Federal Court that cannot support Respondents' case. Inartful she may have been in her expression of events, it was intended to drive her points and invoke her due process rights and not to cause their demise.

case. The error does not give jurisdiction to the Federal Court that it did not have. The error is not a legal basis "to punish Petitioner and reward Respondents". Petitioner was as much a victim as the Federal Court when Respondents filed their federal lawsuit. Petitioner is adjudged to pay Respondents some 1.2 million dollars, when no portion of the federal default judgment of $483,875.09, could have been collected because the Court had no subject matter jurisdiction and the judgment is void. There is no legal or ethical reason why Respondents refuse to call the Court's attention to the violation of the Constitution. If what happened here is condoned, litigants are encouraged to fabricate a Federal Court jurisdiction against a foreign defendant, earn a default judgment, collect it against the attorney. Federal Courts may not know that their void judgments are being collected in State Courts in this manner. Similar situations can breed collusions. Insurance premiums can become extremely prohibitive. State Courts would be inundated with this kind of suit. Uncollected default judgments in Federal Courts could turn into legal malpractice in State Courts after decades when plaintiffs are "informed" by new attorneys that the previous counsel made mistakes. This was Respondents' "accrual date" given by the Court. (App. 20). Federal legal practice could be chilled.

This case was filed in 1999 for alleged errors of Petitioner in 1989, and tried in 2003, some *fourteen years* thereafter. With no deterrent, attorneys will be litigating against each other for collection of "void judgments" while clients continue to "manufacture" Federal Court jurisdiction. Here, the misrepresentation of citizenship in the Federal Court has become more egregious because Respondents are fully represented, and their refusal to call

the attention of the Court and to argue the point is knowing and deliberate. (App. 59-62). The false subject matter jurisdiction of the Federal Court that violated the U.S. Constitution, had come to light and was made clear in the malpractice trial which served its purpose to elicit evidence and truth. The federal underlying lawsuit cannot legally and morally be the basis for Respondents' collection. The pretense that there was a valid subject matter jurisdiction in the underlying case as if the Constitution did not exist, or that Respondents are exempt, should now come to an end. (App. 59-62). This Court's intervention is necessary.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ERLINDA DOMINGUEZ
Petitioner Pro Se
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NO. 26394

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JUNIE BARNEDO and JUAN BARNEDO,
Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM COPULOS; DAVID KUWAHARA; THOMAS WALSH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 26394; CIV. NO. 99-2847).

JUNIE BARNEDO and JUAN BARNEDO,
Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM COPULOS; DAVID KUWAHARA; THOMAS WALSH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE GOVERNMENTAL ENTITIES 1-10, Defendants.

(NO. 26695; CIV. NO. 99-2847).

JUNIE BARNEDO and JUAN BARNEDO,
Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM COPULOS; DAVID KUWAHARA; THOMAS WALSH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10; AND ROE GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 27035; CIV. NO. 99-2847)

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-2847)

SUMMARY DISPOSITION ORDER

(Filed Sept. 29, 2006)

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ., and Circuit Judge Lee in place of Acoba, J., recused)

In this legal malpractice action arising out of an underlying product liability suit and default judgment obtained in federal court, attorney and defendant-appellant Erlinda Dominguez appeals *pro se* from the Circuit Court of the First Circuit's February 9, 2004 amended final judgment[1] in favor of her former clients,

[1] The Honorable Dexter Del Rosario presided over the first motion for summary judgment. The Honorable Victoria S. Marks presided over all other pretrial matters, including the second motion for summary

(Continued on following page)

plaintiffs-appellees Junie and Juan Barnedo [hereinafter, the Barnedos], awarding the Barnedos: (1) $483,875.09 in damages; (2) $479,637.16 in prejudgment interest (as of October 7, 2003); (3) $112,468.77 in attorneys' fees; and (4) $6,426.73 in costs. On appeal, Dominguez appears to contend that the circuit court: (1) erred when it denied her May 3, 2004 and November 8, 2004 postjudgment motions for relief from the judgment because the judgment was void for lack of subject matter jurisdiction due to defects in the Barnedos' Hawai'i Arbitration Rules (HAR) Rule 22[2] notice of appeal from the Court Annexed Arbitration Program (CAAP) award in Dominguez's favor; (2) erred in concluding that the Barnedos' complaint was not barred by the statute of limitations; (3) erred in denying her April 2, 2003 motion for judgment as a matter of law due to the Barnedos' failure to prove duty, causation, or damages; (4) erred or abused its discretion when it admitted the records from the federal action, including the Barnedos' trial exhibits 2, 30, 31, 35, 36, 37, and 50 over her objections because they lacked foundation, were irrelevant and unfairly prejudicial, and constituted hearsay; (5) erred when it issued repetitious, misleading, and incorrect jury instructions over her objections; (6) erred when it issued a misleading special verdict form to the jury over her objections; (7) abused its discretion in awarding attorneys' fees

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judgment, and the trial. The Honorable Karen Blondin served as Arbitration Judge. The Honorable Gary W.B. Chang presided over the postjudgment motions.

[2] HAR Rule 22 provides in pertinent part:

> (A) Within twenty (20) days after the award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the Arbitration Administrator a written Notice of Appeal and Request for Trial De Novo of the action.

under Hawai'i Revised Statutes (HRS) § 607-14 (1993) because the instant action was not in the nature of assumpsit; (8) abused its discretion when it awarded prejudgment interest under HRS § 636-16 (1993) because the start date was arbitrary and unwarranted; and (9) abused its discretion when it denied Dominguez's October 15, 2004 motion for relief from the judgment due to the Barnedos' fraudulent declarations regarding the lack of an English translation of the pleadings in the Japanese declaratory judgment action.[3] The Barnedos, in addition to countering that the circuit court did not commit reversible error on any of the points raised by Dominguez, also argue that Dominguez's briefs violate Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b) and Section 5 of the Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers (GPCCHL) and ask this court to disregard certain arguments raised by Dominguez or impose sanctions as appropriate.

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we hold as follows:

(1) In SC No. 26695, the circuit court erred when it concluded that it lacked jurisdiction to consider Dominguez's Hawai'i Rules of Civil Procedure (HRCP) Rule 60(b) postjudgment motion for relief from the judgment on the merits. *See Amantiad v. Odum*, 90 Hawai'i 152, 158, 977 P.2d 160, 166 (1999) ("The existence of

[3] As set forth herein, one of the problems presented by this appeal is that it is difficult to discern precisely what Dominguez's points of error are. As such, the foregoing is this court's interpretation of her points of error.

jurisdiction is a question of law that we review *de novo* under the right/wrong standard." (Citations omitted.)); *Life of the Land v. Ariyoshi*, 57 Haw. 249, 252, 553 P.2d 464, 466 (1976) (stating that if an HRCP Rule 60(b) motion is filed while an appeal is pending, the trial court has jurisdiction to deny the motion on the merits without remand from the appellate court, but lacks jurisdiction to grant the motion). However, the error was harmless because the motion would have been properly denied on the merits in that the requirements of HAR Rule 22 are not jurisdictional, *see* HAR Rule 7 ("Cases filed in, or removed to, the Circuit Court *shall remain under the jurisdiction* of that court for all phases of the proceedings, including arbitration." (Emphasis added.)), and thus even if the Barnedos' notice of appeal failed to comply with the rule, Dominguez waived that error by failing to timely raise it. *See* HRCP Rule 61 (stating that no error is grounds for disturbing a judgment unless inconsistent with substantial justice); *Hilo Fin. & Thrift Co., Ltd. v. De Costa*, 34 Haw. 47, 48 (1936) (stating that procedural, as opposed to jurisdictional errors, are deemed waived if not timely asserted);

(2) The circuit court properly denied Dominguez's motions for summary judgment based on the statute of limitations. *See Kau v. City & County of Honolulu*, 104 Hawai'i 468, 473, 92 P.3d 477, 482 (2004) ("We review the circuit court's grant or denial of summary judgment *de novo*." (Citations omitted.)). First, there were genuine issues of material fact regarding when the Barnedos should have discovered the existence of their claims. *See Higa v. Mirikitani*, 55 Haw. 167, 172-73, 517 P.2d 1, 5-6 (1973) (stating that all legal malpractice actions, whether characterized as tort or contract actions, are governed by

the six-year statute of limitations found in HRS § 657-1(1)), *cited with approval in Blair v. Ing*, 95 Hawai'i 247, 263 n. 12, 21 P.3d 452, 468 n. 12 (2001); *Norris v. Six Flags Theme Parks, Inc.*, 102 Hawai'i 203, 206, 74 P.3d 26, 29 (2003) ("[T]he moment at which a statute of limitations is triggered is ordinarily a question of fact." (Citation omitted.)); *Blair*, 95 Hawai'i at 267; 21 P.3d at 472 ("[T]he trier of fact must determine the date by which [the plaintiffs] knew or should have known of their malpractice claim."); *Buck v. Miles*, 89 Hawai'i 244, 251, 971 P.2d 717, 724 (1999) ("[U]nder the discovery rule, the statute of limitations begins to run the moment the plaintiff discovers or should have discovered the negligent act, the damage, and the causal connection between the former and the latter." (Citations, internal quotation marks, and brackets omitted.)).

Second, Dominguez effectively abandoned the statute of limitations as a defense at trial in that she requested no questions relating to the statute of limitations in the special verdict form, no jury instructions on the statute of limitations, and made no argument based on the statute of limitations during the trial.[4] Therefore, she should not be

---

[4] The one exception to Dominguez's abandonment of the statute of limitations defense is her motion for judgment as a matter of law arguing that the Barnedos' theory based on Dominguez's failure to defend the Japanese action should not go to the jury because, under the discovery rule, it accrued in February 1991 in that (1) the Barnedos' own testimony demonstrated that they knew as of that time that Dominguez would "ignore" the Japanese action, and (2) the Barnedos should have known, based on the Japanese documents, that they would be deemed to have admitted the allegations in the Japanese complaint if they did not answer. However, even assuming that, despite their testimony that no English translation of the Japanese documents was attached, they should have known what those documents said about the consequences of failure to appear in the Japanese action, there was still

(Continued on following page)

heard to appeal on such grounds now. *See* HRCP Rule 8(c) (stating that the statute of limitations is an affirmative defense); *Mauian Hotel, Inc. v. Maui Pineapple Co., Ltd.*, 52 Haw. 563, 569, 481 P.2d 310, 314-15 (1971) ("It is general law that the statute of limitations is a personal defense and a person may waive the benefits of such statute." (Citations omitted.)); *GECC Fin. Corp. v. Jaffarian*, 79 Hawai'i 516, 526, 904 P.2d 530, 540 (App. 1995) (Acoba, J., concurring) (explaining that affirmative defenses not supported by evidence may be abandoned), *aff'd*, 80 Hawai'i 118, 905 P.2d 624 (1995);

(3) Dominguez fails to comply with HRAP Rule 28(b)[5] inasmuch as (a) some of Dominguez's points of error

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a genuine issue of material fact, as to which Dominguez had the burden of proof, regarding when the Barnedos should have known of a causal connection between a default judgment against them in Japan and an inability to collect on their U.S. judgment (*i.e.*, when the Barnedos should have been charged with the knowledge that a Japanese court might refuse to enforce a foreign judgment that was in direct conflict with a valid final Japanese judgment). Because Dominguez cited *no* evidence on this point, much less evidence such that no reasonable juror could find against her, the circuit court did not err in denying judgment as a matter of law on this issue.

[5] HRAP Rule 28(b) provides in relevant part:

> (4) A concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency. Where applicable, each point shall also include the following:
>
> (A) when the point involves the admission or rejection of evidence, a quotation of the grounds urged for the objection and the full substance of the evidence admitted or rejected;

(Continued on following page)

do not have a corresponding "Argument" section and/or do not state where in the record she raised or objected to the error, (b) Dominguez's argument section raises a multitude of issues that she does not coherently argue and/or does not raise as separate points of error in her "Points of Error" section, and (c) throughout her opening briefs, Dominguez often fails to cite the appropriate standards of review or the relevant statutes. Therefore, we disregard her third, fourth, fifth, sixth, seventh, and eighth points of error. *See* HRAP Rule 28(b)(4) ("Points not presented in accordance with this section will be disregarded[.]"); HRAP Rule 28(b)(7) ("Points not argued may be deemed waived."); *State v. Moore*, 82 Hawai'i 202, 206 n. 1, 921 P.2d 122, 126 n. 1 (1996) (disregarding a claim where a proponent fails to make any discernible argument in support thereof); *Bitney v. Honolulu Police Dep't*, 96

> (B) when the point involves a jury instruction, a quotation of the instruction, given, refused, or modified, together with the objection urged at the trial;
>
> (C) when the point involves a finding or conclusion of the court or agency, a quotation of the finding or conclusion urged as error;
>
> . . . .
>
> *Points not presented in accordance with this section will be disregarded*, except that the appellate court, at its option, may notice a plain error not presented. Lengthy parts of the transcripts that are material to the points presented may be included in the appendix instead of being quoted in the point.
>
> . . . .
>
> (7) The argument, containing the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument may be preceded by a concise summary. *Points not argued may be deemed waived.*

(Emphases added.)

Hawai'i 243, 251, 30 P.3d 257, 265 (2001) (stating that generally "[i]ssues not properly raised on appeal will be deemed to be waived") (alteration in original) (quoting *Hill v. Inouye*, 90 Hawai'i 76, 82, 976 P.2d 390, 396 (1998));[6]

(4) Throughout her briefs, Dominguez vents superfluous and inappropriate invective,[7] which clearly violates Section 5, GPCCHL;[8]

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[6] If this court were to sift the wheat from the chaff and construe Dominguez's scattershot arguments as raising meritorious points, such effort would cross the boundary between judging and advocating. *See Alford v. City & County of Honolulu*, 109 Hawai'i 14, 26, 122 P.3d 809, 821 (2005) (stating that generally "the appellate court cannot serve as both advocate and judge") (internal quotation marks and citation omitted).

[7] For example, the following passage is from her opening brief in SC No. 26394:

> THERE IS EVIL THAT LURKS UNDERNEATH APPELLEES' CLAIMS. COVERED WITH FALSE GRANDEUR, APPELLEES' *CASE HAS NO ROOTS* – IT REVEALED ITS TRUE INSIDES WHEN IT SPOUTED MORE VENOM. APPELLEES' CASE IS INHERENTLY VICIOUS BUT WITHOUT LIFE, A DEAD WEIGHT. APPELLEES' CASE MOLDED ITS ROLE IN LEGAL HISTORY – FICTITIOUS AND TYRANNICAL, HOLLOW BUT OPPRESSIVE. *BUT APPELLEES UNDER-ESTIMATED THE POWER OF "WHAT IS TRUE"*; APPELLEES MUST HAVE BELIEVED THEIR DEAD ROOTS WILL REMAIN HIDDEN AND UNDISCOVERED, CAUSING HAVOC, BUT THAT SPECIAL DAY OF RECKONING OF "JUSTICE BEYOND APPARENT JUSTICE" IS AT HAND.

(Formatting and emphases as in original.) (Footnote omitted.)

[8] Section 5 of the GPCCHL states in pertinent part:

> Written materials submitted to the court should always be factual and concise and should accurately state the current law and fairly represent the parties' position without unfairly attacking the opposing party or opposing counsel.
>
> Specifically, a lawyer who manifests professional courtesy and civility:

(Continued on following page)

(5) The circuit court did not abuse its discretion in denying Dominguez's HRCP Rule 60(b) postjudgment motion for relief from the judgment for fraud on the court because the alleged fraud was discovered *before* the February 9, 2004 judgment was entered; Dominguez thus had the time and the means, both prior to entry of judgment in the trial court and prior to entry of judgment on appeal in SC No. 26394, to verify whether the Barnedos had "lied" in their testimony, and to seek a remedy prior to entry of final judgment. *See Beneficial Hawaii, Inc. v. Casey*, 98 Hawai'i 159, 164, 45 P.3d 359, 364 (2002) ("The circuit court's disposition of an HRCP Rule 60(b) motion is reviewed for abuse of discretion." (Citations omitted.)); *Kawamata Farms, Inc. v. United Agri Prods.*, 86 Hawai'i 214, 259, 948 P.2d 1055, 1100 (1997) ("Under the circumstances of this case, based on the egregious nature of DuPont's fraud, we construe the HRCP so as not to disallow a remedy under HRCP Rule 60(b)(3) when there is a *post-judgment* discovery of fraud supported by clear and convincing evidence." (Emphasis added.)); *Standard Mgmt., Inc. v. Kekona*, 98 Hawai'i 95, 100, 43 P.3d 232, 237 (App. 2001) (stating that where the HRCP Rule 60(b) movant "had ample opportunity to reveal [the alleged perjury] as such," he cannot maintain an independent action for litigation fraud); *Hayashi v. Hayashi*, 4 Haw. App. 286, 292, 666 P.2d 171, 175 (1983) (stating that an action for litigation fraud will not lie unless the plaintiff can show the absence of any other adequate remedy)

. . . .

(b) Does not degrade the intelligence, ethics, morals, integrity, or personal behavior of the opposing party, counsel or witness unless such matters are at issue in the proceedings.

(citing *Winfield Assocs., Inc. v. Stonecipher*, 429 F.2d 1087 (10th Cir. 1970)). Therefore,

IT IS HEREBY ORDERED that the circuit court's: (1) February 9, 2004 amended final judgment, appealed as SC No. 26394, is affirmed; (2) July 12, 2004 postjudgment order denying Dominguez's postjudgment motion to dismiss, appealed as SC No. 26695, is affirmed, but for the reasons stated herein; and (3) December 17, 2004 post-judgment orders (a) denying Dominguez's HRCP Rule 60(b) motion for relief from the February 9, 2004 judgment as void for lack of subject matter jurisdiction, and (b) denying Dominguez's motion for relief from the February 9, 2004 judgment for fraud on the court, appealed as SC No. 27035, are affirmed.

DATED: Honolulu, Hawai'i, September 29, 2006.

On the briefs:

Erlinda Dominguez, defendant-appellant, *pro se*

Francis T. O'Brien and Collin M. (Marty) Fritz for plaintiffs-appellees Junie Barnedo and Juan Barnedo

/s/ Ronald T.Y. Moon

/s/ Steven H. Levinson

/s/ Paula A. Nakayama

/s/ James E. Duffy, Jr.

/s/ Randal K.O. Lee

NO. 26394

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW
OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM
COPULOS; DAVID KUWAHARA; THOMAS WALSH;
JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
ROE NON-PROFIT" CORPORATIONS 1-10;
and ROE GOVERNMENTAL ENTITIES 1-10,
Defendants.
(NOS. 26394, 26695, and 27035)

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-2847)

ORDER

(Filed Oct. 4, 2006)

(By: Duffy, J.)

Upon consideration of the motion for special leave for additional time to file motion for reconsideration of the summary disposition order filed September 29, 2006, the declaration attached thereto, and the record herein,

IT IS HEREBY ORDERED that the motion is granted. The time for filing a motion for reconsideration is extended to October 19, 2006.

DATED: Honolulu, Hawai'i, October 4, 2006.

[SEAL]

Erlinda Dominguez,
defendant-appellant,
pro se, on the motion

/s/ James E. Duffy, Jr.
Associate Justice

NO. 26394

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW
OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM
COPULOS; DAVID KUWAHARA; THOMAS WALSH;
JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE
GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 26394; CIV. NO. 99-2847)

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW
OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM
COPULOS; DAVID KUWAHARA; THOMAS WALSH;
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CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE
GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 26695; CIV. NO. 99-2847)

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM COPULOS; DAVID KUWAHARA; THOMAS WALSH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 27035; CIV. NO. 99-2847)

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-2847)

JUDGMENT ON APPEAL

(By: Duffy, J., for the Court[1])

(Filed Nov. 27, 2006)

Pursuant to the summary disposition order of the Supreme Court of the State of Hawai'i entered on September 29, 2006, the Circuit Court of the First Circuit's: (1) February 9, 2004 amended final judgment, appealed as SC No. 26394, is affirmed; (2) July 12, 2004 postjudgment order denying defendant-appellant Erlinda Dominguez's postjudgment motion to dismiss, appealed as SC No. 26695, is affirmed, but for the reasons stated in the September 29, 2006 summary disposition order; and

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[1] Court: Moon, C.J., Levinson, Nakayama, Duffy, JJ., and Circuit Judge Lee in place of Acoba, J., recused.

(3) December 17, 2004 postjudgment orders (a) denying Dominguez's Hawai'i Rules of Civil Procedure Rule 60(b) motion for relief from the February 9, 2004 judgment as void for lack of subject matter jurisdiction, and (b) denying Dominguez's motion for relief from the February 9, 2004 judgment for fraud on the court, appealed as SC No. 27035, are affirmed.

DATED: Honolulu, Hawai'i, November 27, 2006.

[SEAL]

FOR THE COURT:

/s/ James E. Duffy, Jr.
Associate Justice

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO.) 99-2847-07 VSM) [Legal Malpractice]) AMENDED JUDGMENT

AMENDED JUDGMENT

(Filed Feb. 9, 2004)

In accordance with the Jury's Special Verdict, entered on March 20, 2003, this Amended Judgment is entered in favor of Plaintiffs JUNIE BARNEDO and JUAN BARNEDO and against Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ on Plaintiffs' First Claim for Relief as follows:

JUNIE BARNEDO	$478,875.09
JUAN BARNEDO	$ 5,000.00

In accordance with the Order Granting Plaintiffs' Motion for Prejudgment Interest and Attorneys' Fees, Filed 03-24-03, entered on April 25, 2003, prejudgment interest is added to the judgment in favor of Plaintiffs and against Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ in the amount of $479,637.16 as of October 17, 2003.

In accordance with the Order Granting Plaintiffs' Motion for Prejudgment Interest and Attorneys' Fees, Filed 03-24-03, entered on April 25, 2003, and the Supplemental Order Concerning Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S Motion to Alter or Amend Judgment, Filed 04-02-2003, filed herein on September 25, 2003, attorneys' fees are added to the judgment in favor of Plaintiffs and against Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ in the amount of $112,468.77.

In accordance with the Granting in Part and Denying in Part Plaintiffs' Motion for Taxation of Costs, filed on March 18, 2003, entered herein on April 25, 2003, costs

are taxed in favor of Plaintiffs and against Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ in the amount of $6,426.73.

IT IS FURTHER ORDERED that Defendant ERLINDA DOMINGUEZ having acknowledged that she was legally responsible for the actions of her associates in this case, Plaintiffs' Second Claim for Relief is dismissed without prejudice.

IT IS FURTHER ORDERED that any remaining parties or claims are dismissed without prejudice.

Dated: Honolulu, Hawaii, Feb. 9, 2004

VICTORIA S. MARKS [SEAL]

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

ROY K.S. CHANG
HARVEY M. DEMETRAKOPOULOS
Attorneys for Defendant
ERLINDA DOMINGUEZ, dba
THE LAW OFFICES OF ERLINDA DOMINGUEZ

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS BASED UPON HAWAII REVISED STATUTES 657-1 FILED AUGUST 26, 2002)) Hearing Information:) Date: November 25, 2002) Time: 11:30 a.m.) Judge: Hon. Victoria S. Marks)) Trial Week: March 3, 2003)

ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ DBA THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS BASED UPON HAWAII REVISED STATUTES 657-1 FILED AUGUST 26, 2002

(Filed Dec. 3, 2002)

Defendant Erlinda Dominguez dba The Law Offices of Erlinda Dominguez's Motion for Summary Judgment As to All Claims Based Upon Hawaii Revised Statutes 657-1, filed herein on August 26, 2002, came on for hearing before the Honorable Victoria S. Marks in her courtroom on November 25, 2002 at 11:30 a.m. Francis T. O'Brien, Esq., appeared on behalf of Plaintiffs. Roy K.S. Chang, Esq. and Harvey M. Demetrakopoulos, Esq., appeared on behalf of Defendant. The Court having considered the memoranda and arguments of counsel and the files and pleadings of the case and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant Erlinda Dominguez dba The Law Offices of Erlinda Dominguez's Motion for Summary Judgment As to All Claims Based Upon Hawaii Revised Statutes 657-1 filed herein on August 26, 2002, shall be and is herby denied.

Dated: Honolulu, Hawaii, Dec. 3, 2002

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:
/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY M. DEMETRAKOPOULOS
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ERLINDA DOMINGUEZ DBA
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	CIVIL NO. 99-2847-07 VSM [Legal Malpractice] ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ DBA THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR SUMMARY JUDGMENT FILED AUGUST 26, 2002 Hearing Information: Date: November 25, 2002 Time: 11:30 a.m. Judge: Hon. Victoria S. Marks Trial Week: March 3, 2003

ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ DBA THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR SUMMARY JUDGMENT FILED AUGUST 26, 2002

(Filed Dec. 3, 2002)

Defendant Erlinda Dominguez dba The Law Offices of Erlinda Dominguez's Motion for Summary Judgment, filed herein on August 26, 2002, came on for hearing before the Honorable Victoria S. Marks in her courtroom on November 25, 2002 at 11:30 a.m. Francis T. O'Brien, Esq., appeared on behalf of Plaintiffs. Roy K.S. Chang, Esq., and Harvey M. Demetrakopoulos, Esq., appeared on behalf of Defendant. The Court having considered the memoranda and arguments of counsel and the files and pleadings of the case and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendant Erlinda Dominguez dba The Law Offices of Erlinda Dominguez's Motion for Summary Judgment filed herein on August 26, 2002 shall be and is herby denied.

Dated: Honolulu, Hawaii, Dec. 3, 2002

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY M. DEMETRAKOPOULOS
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DBA THE LAW OFFICES
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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	CIVIL NO. 99-2847-07 VSM [Legal Malpractice] ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 1 TO PROHIBIT THE ADMISSION OF ANY EVIDENCE OR ARGUMENT RELATING TO ALLEGED ERRONEOUS DECISIONS BY ERLINDA DOMINGUEZ UNTIL THE COURT FIRST DETERMINES THAT SHE ERRED AND WELL-INFORMED LAWYERS COULD NOT ENTERTAIN REASONABLE DOUBT AS TO THE LEGAL DECISIONS WHICH WERE MADE Hearing Information: Date: February 26, 2003 Time: 8:30 a.m. Judge: Hon. Victoria S. Marks Trial Week: March 3, 2003

ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 1 TO PROHIBIT THE ADMISSION OF ANY EVIDENCE OR ARGUMENT RELATING TO ALLEGED ERRONEOUS DECISIONS BY ERLINDA DOMINGUEZ UNTIL THE COURT FIRST DETERMINES THAT SHE ERRED AND WELL-INFORMED LAWYERS COULD NOT ENTERTAIN REASONABLE DOUBT AS TO THE LEGAL DECISIONS WHICH WERE MADE

(Filed Mar. 5, 2003)

Defendant's Motion in Limine No. 1 to Prohibit the Admission of any Evidence or Argument Relating to Alleged Erroneous Decisions by Erlinda Dominguez until the Court First Determines that she Erred and Well-informed Lawyers Could not Entertain Reasonable Doubt as to the Legal Decisions Which were made, filed February 14, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on February 26, 2003, at 8:30 a.m. Francis T. O'Brien appeared on behalf of Plaintiffs. Roy K.S. Chang and Harvey M. Demetrakopoulos appeared on behalf of Defendant ERLINDA DOMINGUEZ. The Court having considered the memoranda and arguments of counsel and good cause appearing therefore,

IT IS HEREBY ORDERED that said Motion in Limine No. 1 shall be and is hereby denied.

Dated: Honolulu, Hawaii, Mar. 4, 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:
/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY H. DEMETRAKOPOULOS
Attorneys for Defendant ERLINDA DOMINGUEZ

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 4 FOR AN ORDER THAT PLAINTIFFS MAY NOT INTRODUCE AS EVIDENCE OR HAVE ANY WITNESS TESTIFY REGARDING ANY REPORT OR OPINIONS PREPARED BY PHILIP CHARLEY)) Hearing Information:) Date: February 26, 2003) Time: 8:30 a.m.) Judge: Hon. Victoria S. Marks)) Trial Week: March 3, 2003

ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 4 FOR AN ORDER THAT PLAINTIFFS MAY NOT INTRODUCE AS EVIDENCE OR HAVE ANY WITNESS TESTIFY REGARDING ANY REPORT OR OPINIONS OF PHILIP CHARLEY

(Filed Mar. 5, 2003)

Defendant's Motion in Limine No. 4 For an Order that Plaintiffs May Not Introduce as Evidence or Have any Witness Testify Regarding Any Report or Opinions of Philip Charley, filed February 14, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on February 26, 2003, at 8:30 a.m. Francis T. O'Brien appeared on behalf of Plaintiffs. Roy K.S. Chang and Harvey H. Demetrakopoulos appeared on behalf of Defendant ERLINDA DOMINGUEZ. The Court having considered the memoranda and arguments of counsel and good cause appearing therefore.

IT IS HEREBY ORDERED that said Motion in Limine No. 4 shall be and is hereby denied.

IT IS FURTHER ORDERED that the exhibit relating to Dr. Charley shall be admitted with a limiting instruction detailing the purposes for which the jury may consider the exhibit.

Dated: Honolulu, Hawaii, MAR 04 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:
/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY H. DEMETRAKOPOULOS
Attorneys for Defendant ERLINDA DOMINGUEZ

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 8 FOR AN ORDER PREVENTING PLAINTIFFS FROM INTRODUCING THE AMOUNT OF THE DEFAULT JUDGMENT ENTERED IN THE UNDERLYING CASE AS INDICATIVE OF THE VALUE OF PLAINTIFF'S UNDERLYING CAUSE OF ACTION Hearing Information: Date: February 26, 2003 Time: 8:30 a.m. Judge: Hon. Victoria S. Marks Trial Week: March 3, 2003

ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 8 FOR AN ORDER PREVENTING PLAINTIFFS FROM INTRODUCING THE AMOUNT OF THE DEFAULT JUDGMENT ENTERED IN THE UNDERLYING CASE AS EVIDENCE OF THE VALUE OF PLAINTIFFS' UNDERLYING CAUSE OF ACTION

(Filed Mar. 5, 2003)

Defendant's Motion in Limine No. 8 For an Order Preventing Plaintiffs from Introducing the Amount of the Default Judgment Entered in the Underlying Case as Evidence of the Value of Plaintiffs' Underlying Cause of Action, filed February 14, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on February 26, 2003, at 8:30 a.m. Francis T. O'Brien appeared on behalf of Plaintiffs. Roy K.S. Chang and Harvey H. Demetrakopoulos appeared on behalf of Defendant ERLINDA DOMINGUEZ. The Court having considered the memoranda and arguments of counsel and good cause appearing therefore.

IT IS HEREBY ORDERED that said Motion in Limine No. 8 shall be and is hereby denied.

Dated: Honolulu, Hawaii, MAR 04 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY H. DEMETRAKOPOULOS
Attorneys for Defendant ERLINDA DOMINGUEZ

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 12 FOR AN ORDER BARRING THE ADMISSION OF ANY EVIDENCE OR ARGUMENT RELATING TO LEGAL MALPRACTICE CLAIMS UNTIL THE JURY HAS FIRST DECIDED WHETHER A DEFECTIVE PRODUCT CAUSED THE UNDERLYING INJURY)) Hearing Information:) Date: February 26, 2003) Time: 8:30 a.m.) Judge: Hon. Victoria S. Marks)) Trial Week: March 3, 2003

ORDER DENYING DEFENDANT'S MOTION IN LIMINE NO. 12 FOR AN ORDER BARRING THE ADMISSION OF ANY EVIDENCE OR ARGUMENT RELATING TO LEGAL MALPRACTICE CLAIMS UNTIL THE JURY HAS FIRST DECIDED WHETHER A DEFECTIVE PRODUCT CAUSED THE UNDERLYING INJURY

(Filed Mar. 5, 2003)

Defendant's Motion in Limine No. 12 For an Order Barring the Admission of Any Evidence or Argument Relating to Legal Malpractice Claims Until the Jury has First Decided Whether a Defective Product Caused the Underlying Injury, filed February 14, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on February 26, 2003, at 8:30 a.m. Francis T. O'Brien appeared on behalf of Plaintiffs. Roy K.S. Chang and Harvey H. Demetrakopoulos appeared on behalf of Defendant ERLINDA DOMINGUEZ. The Court having considered the memoranda and arguments of counsel and good cause appearing therefore,

IT IS HEREBY ORDERED that said Motion in Limine No. 12 shall be and is hereby denied.

Dated: Honolulu, Hawaii, MAR 04 2003

/s/ VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY H. DEMETRAKOPOULOS
Attorneys for Defendant ERLINDA DOMINGUEZ

PERMISSION TO COPY DENIED, HRS 606.13, ETC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, et al., Defendants.	CIVIL NO. 99-2847

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE VICTORIA MARKS, Third Division, Judge Presiding, on Wednesday, March 5, 2003; Further Jury Trial (Jury Selection and Opening Statement by Mr. O'Brien).

APPEARANCES:

FRANCIS O'BRIEN, ESQ.	For the Plaintiffs
ROY CHANG, ESQ. HARVEY DEMETRAKOPOULOS, ESQ.	For the Defendant Dominguez

* * *

[139] MR. DEMETRAKOPOULOS:

* * *

We object to the submission of evidence to the jury on the grounds set forth in all of the motions in limine filed by

defendant herein and the grounds set forth at the hearing on the motions of limine herein on February 26, 2003, and on grounds set forth in our written objections filed on February 21, 2003.

We don't waive any of our objections by proceeding with the litigation and/or our submission of exhibits in evidence; in particular, if our motion had been granted or objections sustained, we would not have submitted any of our exhibits as evidence. Finally, could the Court please confirm our understanding that the Court consider its prior rulings on the motions in limine and on the admissibility of the evidence as final and not subject to further argument.

* * *

[140] THE COURT: Court's rulings regarding the motions in limine stand; Court's rulings regarding the admission of exhibits to date and statements stand.

* * *

PERMISSION TO COPY DENIED, HRS 606.13, ETC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, et al., Defendants.	CIVIL NO. 99-0-2847

TRANSCRIPT OF PROCEEDINGS

had before the HONORABLE VICTORIA S. MARKS, Third Division, Judge Presiding, on Wednesday, March 12, 2003

1) FURTHER JURY TRIAL

APPEARANCES:

FRANCIS T. O'BRIEN, Esq.	For the Plaintiffs
ROY CHANG, Esq. HARVEY DEMETRAKOPOULOS, Esq. ERLINDA C. DOMINGUEZ, Esq.	For the Defendant Erlinda Dominguez, dba The Law Offices of Erlinda Dominguez

* * *

[42] MR. DEMETRAKOPOULOS:

* * *

So that's true, Judge. But, again, this is where we filed motions early on. And this is [43] where it finally

comes, Judge. You've got to make that judgment call. You've got to make that decision now. Was this a well-settled area of law?

* * *

There's been no proof before this Court [44] that a defense, a viable defense, existed under Japanese law to be brought in Japan. We can't guess at that. That's across the international border. We're not talking about Virginia or Maryland or anywhere else.

THE COURT: But the fact that's here is that the Barnedos haven't recovered anything on the judgment.

MR. DEMETRAKOPOULOS: But there's no proof before this Court, no evidence to this Court that the reason they haven't recovered anything on that judgment is because of an error she did on this specific issue of not hiring a Japanese lawyer for them. There's no connection that's been provided to this Court.

I agree, the proof is that they've not received anything on the default judgment. There's no proof before this Court on why. There's speculation. Speculation is because of the method of service, but no one tried to go enforce it in Japan. Speculation is because no one defended in Japan, but no one told us there's a defense in Japan, that they would have prevailed, that they would have been accepted in Japan as litigants.

* * *

[47] That's the only evidence before you now, Judge. There's no other evidence regarding this transaction other than what Ms. Matsuo told you this morning, "We gave the money to Five Star. He went to Japan and bought it."

Thank you. I hope the Court will at least consider in part the directed verdict motions so we can identify the remaining issues for trial.

THE COURT: The Court's denying the motion for judgment as a matter of law. I think the plaintiff has made out a prima facie case regarding their claims. And that's why the motion is denied in total.

* * *

[48] MR. DEMETRAKOPOULOS: I fully understand that, Judge. Could you go one step further and tell me is the Court saying there's evidence before it now that that negligence caused harm to the Barnedos based upon results or non results in Japan? Because that's the part we don't have anything on.

THE COURT: Well, you may want to dissect it in that fashion. I'm saying prima facie case is judgment hasn't been collected.

MR. DEMETRAKOPOULOS: But don't – okay. May I offer one analogy, Judge, though?

THE COURT: Be my guest.

MR. DEMETRAKOPOULOS: That's similar to saying the proof is that Ms. Dominguez was driving on the wrong side of the road at 80 miles an hour in a 50 zone. She was weaving all over the place, skidding her car, but there's no proof she hit anyone. There's no proof she injured anyone. There's no proof she crashed in anyone. We don't have that –

THE COURT: I don't think that's a valid analogy.

MR. DEMETRAKOPOULOS: No damage is caused is what I'm saying.

THE COURT: Well, we can agree to [49] disagree.

MR. DEMETRAKOPOULOS: Thank you, Judge. Thank you for indulging me.

* * *

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JUNIE BARNEDO AND JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendants.	)	CIVIL NO. 99-2847

TRANSCRIPT

of the proceeding held on Tuesday, March 18, 2003, before the Honorable Victoria S. Marks, Judge presiding.

APPEARANCES:

FRANCIS O'BRIEN	Attorney for Plaintiffs
ROY CHANG HARVEY DEMETRAKOPOULOS,	Attorneys for Defendants

* * *

[7] THE COURT: Presentation of the evidence is now concluded. I will be giving you instructions regarding the law.

* * *

[16] In Hawaii, to prevail on the claim of strict products liability against defendants Marukiku Menki and Royal Trading, Plaintiffs must prove all of the following elements:

1. The product was defective; and,

2. The defect was a legal cause of injury to plaintiffs; and,

3. Defendants were part of the chain of distribution of the product.

Defendants were part of the chain of distribution of a product if they were a manufacturer, seller, or lessor of that product.

* * *

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	CIVIL NO. 99-2847-07 VSM [Legal Malpractice] ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICER OF ERLINDA DOMINGUEZ'S MOTION FOR ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT AS A MATTER OF LAW BECAUSE NO EVIDENCE EXISTS IN THE RECORD THAT DEFENDANT'S CONDUCT WAS A LEGAL CAUSE OF ANY DAMAGE TO PLAINTIFFS, FILED 04-02-2003 Hearing Information: Date: April 21, 2003 Time: 10:30 a.m. Judge: Hon. Victoria S. Marks Trial Week: March 3, 2003

ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICER OF ERLINDA DOMINGUEZ'S MOTION FOR ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT AS A MATTER OF LAW BECAUSE NO EVIDENCE EXISTS IN THE RECORD THAT DEFENDANT'S CONDUCT WAS A LEGAL CAUSE OF ANY DAMAGE TO PLAINTIFFS, FILED 04-02-2003

(Filed Apr. 25, 2003)

Defendant Erlinda Dominguez, dba The Law Offices of Erlinda Dominguez's Motion for Entry of Judgment as a Matter of Law Because No Evidence Exists in the Record That Defendant's Conduct Was a Legal Cause of Any Damage to Plaintiffs, filed herein on April 2, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on April 21, 2003, at 10:30 a.m. Francis T. O'Brien, Esq. appeared on behalf of Plaintiffs. Harvey M. Demetrakopoulos, Esq., and Roy K.S. Chang, Esq., appeared on behalf of Defendant. The Court having considered the memoranda and arguments of counsel and the files and pleadings of the case as well as the evidence introduced during the trial of this matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant Erlinda Dominguez, dba The Law Offices of Erlinda Dominguez's Motion for Entry of Judgment as a Matter of Law Because No Evidence Exists in the Record That Defendant's Conduct Was a Legal Cause of Any Damage to Plaintiffs, filed herein on April 2, 2003, shall be and is hereby DENIED.

Dated: Honolulu, Hawaii, APR 24 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
HARVEY M. DEMETRAKOPOULOS
ROY K.S. CHANG
Attorneys for Defendant

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICER OF ERLINDA DOMINGUEZ'S MOTION FOR ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT AS A MATTER OF LAW FILED 04-02-2003 Hearing Information: Date: April 21, 2003 Time: 10:30 a.m. Judge: Hon. Victoria S. Marks Trial Week: March 3, 2003

ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICER OF ERLINDA DOMINGUEZ'S MOTION FOR ENTRY OF JUDGMENT IN FAVOR OF DEFENDANT AS A MATTER OF LAW, FILED 04-02-2003

(Filed Apr. 25, 2003)

Defendant Erlinda Dominguez, dba The Law Offices of Erlinda Dominguez's Motion for Entry of Judgment as a Matter of Law, filed herein on April 2, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on April 21, 2003, at 10:30 a.m. Francis T. O'Brien, Esq. appeared on behalf of Plaintiffs. Harvey M. Demetrakopoulos, Esq., and Roy K.S. Chang, Esq., appeared on behalf of Defendant. The Court having considered the memoranda and arguments of counsel and the files and pleadings of the case as well as the evidence introduced during the trial of this matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant Erlinda Dominguez, dba The Law Offices of Erlinda Dominguez's Motion for Entry of Judgment as a Matter of Law, filed on April 2, 2003, shall be and is hereby DENIED.

Dated: Honolulu, Hawaii, APR 24 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
HARVEY M. DEMETRAKOPOULOS
ROY K.S. CHANG
Attorneys for Defendant

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Attorneys at Law

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR A NEW TRIAL FILED JUNE 6, 2003)) Hearing Information:) Date: July 24, 2003) Time: 9:30 a.m.) Continued Date:) August 1, 2003) Time: 4:00 p.m.) Judge: Hon. Victoria S. Marks)) Trial Week: March 3, 2003

ORDER DENYING DEFENDANT ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S MOTION FOR A NEW TRIAL FILED JUNE 6, 2003

(Filed Aug. 12, 2003)

Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S Motion for a New Trial, filed June 6, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on August 1, 2003 at 4:00 p.m. Francis T. O'Brien appeared on behalf of Plaintiffs. Roy K.S. Chang and Harvey M. Demetrakopoulos appeared on behalf of Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ. The Court having considered the memoranda and arguments of counsel and the files and pleadings of the case and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ'S Motion for a New Trial, filed on June 6, 2003, shall be and is hereby denied.

Dated: Honolulu, Hawaii, AUG 11 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
ROY K.S. CHANG
HARVEY H. DEMETRAKOPOULOS
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, RON R. ASHLOCK, THOMAS KASTER, WILLIAM COPULOS, DAVID KUWAHARA, THOMAS WALSH, JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, and DOE PARTNERSHIPS 1-10, Defendants.	) CIVIL NO. 99-2847-07 VSM) [Legal Malpractice])) ORDER GRANTING PLAINTIFFS' MOTION FOR PREJUDGMENT INTEREST AND ATTORNEYS' FEES, FILED 03-24-2003)) Hearing Information:) Date: April 21, 2003) Time: 10:30 a.m.) Judge: Hon. Victoria S. Marks) Trial Week: March 3, 2003

ORDER GRANTING PLAINTIFFS' MOTION FOR PREJUDGMENT INTEREST AND ATTORNEYS' FEES, FILED 03-24-2003

(Filed Apr. 25, 2003)

Plaintiffs JUNIE BARNEDO and JUAN BARNEDO'S Motion for Prejudgment Interest and Attorneys' Fees, filed herein on March 24, 2003, came on for hearing before the Honorable Victoria S. Marks in her courtroom on April 21, 2003, at 10:30 a.m. Francis T. O'Brien, Esq., appeared on behalf of Plaintiffs. Harvey M. Demetrakopoulos, Esq., and Roy K. S. Chang, Esq., appeared on behalf of Defendant. The Court having considered the memoranda and arguments of counsel, the files and pleadings of the case and the evidence introduced during the trial of this matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Prejudgment Interest and Attorneys' Fees, filed March 24, 2003, shall be and is hereby GRANTED; and

IT IS FURTHER ORDERED that prejudgment interest at the rate of 10% per annum shall commence on August 24, 1993; and

IT IS FURTHER ORDERED that Plaintiffs shall be awarded attorneys' fees in the amount of 25% of the judgment awarded by the jury, or $120,968.77.

Dated: Honolulu, Hawaii, APR 24 2003

VICTORIA S. MARKS [SEAL]
JUDGE OF THE ABOVE-
ENTITLED COURT

APPROVED AS TO FORM:

/s/ Harvey M. Demetrakopoulos
HARVEY H. DEMETRAKOPOULOS
ROY K.S. CHANG
Attorneys for Defendant

NO. 26394

IN THE SUPREME COURT OF THE
STATE OF HAWAI'I

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW
OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM
COPULOS; DAVID KUWAHARA; THOMAS WALSH;
JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
ROE "NON-PROFIT" CORPORATIONS 1-10; and
ROE GOVERNMENTAL ENTITIES 1-10, Defendants.

(NO. 26394; CIV. NO. 99-2847)

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW
OFFICES OF ERLINDA DOMINGUEZ,
Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM
COPULOS; DAVID KUWAHARA; THOMAS WALSH;
JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10;
ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE
GOVERNMENTAL ENTITIES 1-10, Defendants.

(NO. 26695; CIV. NO. 99-2847)

JUNIE BARNEDO and
JUAN BARNEDO, Plaintiffs-Appellees,

vs.

ERLINDA DOMINGUEZ, dba THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant,

and

RON R. ASHLOCK; THOMAS KASTER; WILLIAM COPULOS; DAVID KUWAHARA; THOMAS WALSH; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; ROE "NON-PROFIT" CORPORATIONS 1-10; and ROE GOVERNMENTAL ENTITIES 1-10, Defendants.
(NO. 27035, CIV. NO. 99-2847)

APPEALS FROM THE FIRST CIRCUIT COURT
(CIV. NO. 99-2847)

ORDER DENYING MOTION
FOR RECONSIDERATION
(Filed Oct. 30, 2006)

(By: Moon, C.J., Levinson, Nakayama, Duffy, JJ., and Circuit Judge Lee in place of Acoba, J., recused)

The motion for reconsideration filed on October 19, 2006 by defendant-appellant Erlinda Dominguez, requesting that this court review its summary disposition order, filed on September 29, 2006, is hereby denied.

DATED: Honolulu, Hawai'i, October 30, 2006.

Erlinda Dominguez,
defendant-appellant,
pro se, on the motion

/s/ Ronald T.Y. Moon
/s/ Steven H. Levinson
/s/ Paula A. Nakayama
/s/ James E. Duffy, Jr.
/s/ Randal K.O. Lee

U.S. CONST., ARTICLE III

* * *

Section 2. The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * *

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between –

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

* * *

U.S. CONST., ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb nor shall be compelled in any criminal case to bear witness against himself, nor be deprived of life, liberty, or property without due process of law nor shall private property be taken for public use, without just compensation.

* * *

U.S. CONST., ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, doing business as THE LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant(s).	Civil No. 99-2847 (Legal Malpractice) SPECIAL VERDICT FORM

SPECIAL VERDICT FORM

(Filed Mar. 20, 2003)

The jury must answer all of the questions, unless otherwise indicated. To understand what issues are being submitted to you, you may wish to read over the entire Special Verdict Form before proceeding to answer. Answer all question in numerical order. Follow all directions carefully. Each answer requires the agreement of at least ten (10) jurors; but the same ten (10) jurors need not agree on each answer. If you do not understand any question, or if you wish to communicate with the Court on any other subject, you must do so in writing through the bailiff.

SPECIAL VERDICT FORM

PART I – Products Liability

As to the underlying products liability case:

1. Was the machine defective?

   YES ✓ NO _____

   If you answered "yes", then go to Question No. 2
   If you answered "No", then go to part II.

2. Was the defect a legal cause of the injuries/damages to the Plaintiffs?

   YES ✓ NO _____

   If you answered "Yes", then go to question No. 3.
   If you answered "No", then go to Part II.

3. Was Royal Trading Company Inc. in the chain of distribution?

   YES _____ NO ✓

   Go to question 4.

4. What are the Plaintiffs' total damages caused by the defect in the machine?

   Junie Barnedo $ 478,875.09

   Juan Barnedo $ 5,000.00

   Go to question 5.

5. Was Plaintiff, Junie Barnedo, negligent?

   YES _____ NO ✓

   If you answered Question No. 5 "Yes," then go to Question No. 6.
   If you answered Question No. 5 "No," then go to Part II.

6. Was the Plaintiff's, Junie Barnedo's, negligence a legal cause of her injuries/damages?

YES _____ NO _____

Go to Question No. 7.

7. 100% represents the total causes of Plaintiff Junie Barnedo's accident. What percentage of this 100% is attributable to Plaintiff Junie Barnedo and what percentage is attributable to others?

Junie Barnedo ____%

Marukiku Menki/ Royal Trading ____%

5 Star Noodle ____%

Go on to Part II.

PART II – LEGAL MALPRACTICE

As to the Legal Malpractice case:

8. Was the Defendant, Erlinda Dominguez, negligent in representing the Plaintiffs, Junie Barnedo and Juan Barnedo:

A. by choosing service by mail and/or service by publication regarding Marukiku Menki Company, Ltd.?

YES ✓ NO _____

B. by her actions regarding the Japanese lawsuit by Marukiku Menki Company, Ltd. against the Barnedos?

YES ✓ NO _____

C. by choosing not to name Royal Trading Company Inc. as a Defendant?

YES ✓ NO _____

If you answered "Yes" to any one of these, then go to Question No. 9.
If you answered "No" to all of these, then have your foreperson sign and date the verdict form and notify the Bailiff that you have reached a verdict.

9. Was Defendant's, Erlinda Dominguez,' negligence a legal cause of damages to the Plaintiffs, Junie Barnedo and Juan Barnedo?

YES ✓ NO _____

If you answered Question No. 9 "Yes," then go to Question No. 10.
If you answered Question No. 9 "No," then have your foreperson sign and date this verdict form and notify the Bailiff you have reached a verdict.

10. What are the Plaintiffs' total damages caused by the Defendant, Erlinda Dominguez?

Junie Barnedo $ 478,875.09

Juan Barnedo $ 5,000.00

Sign and date this verdict form and notify the Bailiff that you have reached a verdict.

DATED: Honolulu, Hawaii 3-20-03

/s/ Louis Hanan
FOREPERSON

PERMISSION TO COPY DENIED, HRS 606.13, ETC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs, vs. ERLINDA DOMINGUEZ, et al., Defendants.	CIVIL NO. 99-2847

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE VICTORIA MARKS, Third Division, Judge Presiding, on Thursday, March 6, 2003; Further Jury Trial

APPEARANCES:

FRANCIS O'BRIEN, ESQ.	For the Plaintiffs
ROY CHANG, ESQ. HARVEY DEMETRAKOPOULOS, ESQ.	For the Defendant Dominguez

* * *

[8] DIRECT EXAMINATION

BY MR. O'BRIEN:

* * *

Q. Mrs. Barnedo, where do you live at the present time?

A. We live in Chicago.

Q. Are you originally from the United States?

A. No, from the Philippines.

* * *

Q. You came to the United States in the 1980s?

A. 1986.

* * *

[48] CROSS-EXAMINATION

BY MR. CHANG:

* * *

[51] Q. Now, Ms. Barnedo, let me change some of the questions here. At the time of your accident, how long had you been in the United States?

A. Three years.

Q. And you were here on what kind of a visa?

A. Immigrant.

Q. So you didn't actually become a United States citizen until several years later after your accident; right?

A. Correct.

Q. You became a citizen sometime in 199- – the end of 1991?

A. Correct.

* * *

[57] Q. And when he came to the United States, he told the US immigration service that he was coming on a tourist visa; isn't that right?

A. Correct.

* * *

Q. He stayed continuously for over two years up to the time of your accident; isn't that right?

A. Correct.

Q. And, in fact, the reason he gave that why he [58] needed a tourist visa was to go to Virginia for a religious seminar; isn't that right?

A. Correct.

* * *

Q. He came to Hawaii and stayed here with you?

A. Correct.

Q. And that's why the Immigration and Naturalization Service was accusing him of defrauding the United States government; isn't that right?

A. Correct.

Q. So at the time that this accident happened, his immigration status was a big problem for the entire family, wasn't it?

A. We already have a lawyer at that time for him.

* * *

---

[90] DIRECT EXAMINATION

BY MR. O'BRIEN:

* * *

Q. Mr. Barnedo, where were you born?

A. I was born in Manila, Philippines.

* * *

[91] Q. When did you come to the United States?

* * *

[92] Q. When you came to the United States, what kind of a visa did you have?

A. A visitor's visa, tourist.

* * *

[93] Q. Now to jump ahead, at some point did the immigration people become unhappy with you for the fact that you had overstayed?

A. They were.

Q. And is that something that is – what is the status of that at the present time?

A. At the present time? Ever since 1991 I'm legally authorized to work in the United States and right [94] now I just had my fingerprint taken and I'm just waiting for the interview for eligibility to be a permanent – adjust my status as a permanent resident.

* * *

S. C. 26394

IN THE SUPREME COURT
OF THE STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs-Appellees, vs. ERLINDA DOMINGUEZ, dba THE [] LAW OFFICES OF ERLINDA DOMINGUEZ, et al., Defendant-Appellant, and et al., Defendants.	CIVIL NO. 99-2847-07 (Legal Malpractice) APPEAL FROM THE 1) JUDGMENT, filed on October 14, 2003 2) AMENDED JUDGMENT, filed on February 9, 2004 FIRST CIRCUIT COURT HON. DEXTER DEL ROSARIO HON. KAREN BLONDIN HON. VICTORIA S. MARKS Judges

DEFENDANT-APPELLANT'S
AMENDED OPENING BRIEF

APPENDIXES A-H

STATEMENT OF A RELATED CASE AND

CERTIFICATE OF SERVICE

(Filed Oct. 22, 2004)

ERLINDA DOMINGUEZ 2567
1804 Ala Moana Blvd., #17-A
Honolulu, Hawaii 96815
Telephone No.: 531-8457

Counsel (Pro Se)
for Defendant-Appellant
ERLINDA DOMINGUEZ, dba
THE LAW OFFICES OF
ERLINDA DOMINGUEZ

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APPENDIX "A" TO APPENDIX "H" ATTACHED

STATEMENT OF RELATED CASES

* * *

4. <u>There was no valid product liability underlying case:</u>

"Marukiku" had no business in Hawaii or anywhere in the United States. A state may exercise jurisdiction over an absent defendant *only if the defendant has certain minimum contacts with the forum* not to offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Jurisdiction needs "substantial minimum contact". *Hawaii Credit Corp. v. Continental Credit Card Corp.*, 290 F. Supp. 848 (1968). And since Mr. Barnedo turned up to be a deportable alien (aliens on both sides), there was no "diversity of citizenship", no subject matter jurisdiction. *U.S. Constitution, Art. 111, Sec. 2*; and *28 U.S.C.A., 1332*. No underlying case, *no prospects of collectibility*! "Marukiku" could set aside the judgment as void under *Rule 60(b), FRCP*, or totally ignore it.

* * *

S. C. 27035

IN THE SUPREME COURT
OF THE STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs-Appellees, vs. ERLINDA DOMINGUEZ, dba THE [ ] LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant, et al., Defendants.	) CIVIL NO. 99-2847) (Legal Malpractice))) APPEAL FROM THE)) (1) ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT AND AMENDED JUDGMENT UNDER RULE 60(B), HRCP, Filed December 17, 2004)) (2) ORDER DENYING DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT AND AMENDED JUDGMENT UNDER RULE (60)(B)(4) AND 6; AND FOR RELEASE FROM BOND/SECURITY filed on December 17, 2004)) FIRST CIRCUIT COURT)) HON. DEXTER DEL ROSARIO) HON. KAREN BLONDIN) HON. VICTORIA S. MARKS) HON. GARY W. B CHANG) Judges

DEFENDANT-APPELLANT'S REPLY BRIEF

APPENDIX "A"

CERTIFICATE OF SERVICE

ERLINDA DOMINGUEZ 2567
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Telephone No.: (808) 531-8457

Counsel (Pro Se) for
Defendant-Appellant
Erlinda Dominguez, dba
Law Offices of Erlinda Dominguez

* * *

Finally, *the underlying federal Court had no subject matter jurisdiction*, lack of diversity. *U.S. Constitution, Art.111, Sec. 2*; *28 U.S.C.A.* Mr. Appellee has been an "alien" [TR, 3/6/03, vol.8, pp.120-127] and "Marukiku" has been an "alien" [Exhs.3,4,22].

* * *

DATED: Honolulu, Hawaii, this 21st day of June, 2005.

Respectfully Submitted:

/s/ Erlinda Dominguez
ERLINDA DOMINGUEZ
Defendant-Appellant Pro Se

S. C. 26394
(Consolidated NOS. 26394, 26695, and 27035)

IN THE SUPREME COURT
OF THE STATE OF HAWAII

JUNIE BARNEDO and JUAN BARNEDO, Plaintiffs-Appellees, vs. ERLINDA DOMINGUEZ, dba THE [ ] LAW OFFICES OF ERLINDA DOMINGUEZ, Defendant-Appellant, et al., Defendants.	) CIVIL NO. 99-2847-07) (Legal Malpractice)) APPEAL FROM THE) CIRCUIT COURT) (CIV. NO. 99-2847)) HONORABLE) DEXTER DEL ROSARIO) HONORABLE) KAREN BLONDIN) HONORABLE) VICTORI[A] S. MARKS) HONORABLE) GARY W. B. CHANG) Judges

DEFENDANT-APPELLANT'S MOTION FOR RECONSIDERATION OF THE SUMMARY DISPOSITION ORDER, FILED ON SEPTEMBER 29, 2006

DECLARATION OF DEFENDANT-APPELLANT

APPENDIXES "A" TO "H"

CERTIFICATE OF SERVICE

(Filed Oct. 19, 2006)

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for Defendant-Appellant
Erlinda Dominguez, dba
Law Offices of Erlinda Dominguez, Pro Se

SUBJECT INDEX

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Conclusion 20

* * *

The United States District Court for the State of Hawaii had no subject matter jurisdiction over the case filed by Appellees where they claim the malpractice of Appellant occurred – in *Barnedo & Barnedo v. Marukiku Menki, Ltd., a Japan Corporation, et al., Civil*

No. 89-00730. It is because Appellees (the "*Barnedos*") were "aliens", with Philippine citizenship, and the Japan company they sued, Marukiku Menki, Ltd, ("*Marukiku*"), was an "alien" incorporated and doing business in Japan. *An alien cannot sue another alien in a U.S. District Court.* This would violate *Art. III, Sec. 2 of the U.S. Constitution* and *28 U.S.C.A, Sec. 1332,* that require subject matter "complete diversity of citizenship" between the parties who desire access in the U.S. Court. The issue was presented and argued by Appellant. (Amended Opening Brief, "*herein Op. Brief*", p.33, S.C. 26394). Appellant pointed to the evidence and where on the records they could be found; Appellee, *Mr. Barnedo*, has been an overstaying "alien" on an expired U.S. tourist visa, and he sued another "alien", the *Marukiku* Japan Corporation incorporated and doing business in Japan. Also significant, Appellant had briefed the lack of "minimum contact with the forum". Any Court in the State cannot acquire "personal jurisdiction" over *Marukiku* who does not choose to appear. It would offend traditional notions of fair play and substantial justice, citing *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (U.S. 1945); *Hawaii Credit Corp. v. Continental Credit Card Corp.*, 290 F. Supp. 848 (1968). Appellant further directed the Hon. Court's attention to the jurisdictional issue. [Op. Brief, p.2, S.C. 26394; Reply Brief, p.10 in S.C. 27035]. Although not raised in the trial level because the evidence was adduced during the legal malpractice trial, this Honorable Supreme Court *must be informed.* "Subject Matter Jurisdiction" issue is never late as hereunder discussed.

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